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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92053501
Party	Defendant Del Taco, LLC
Correspondence Address	APRIL L BESL DINSMORE & SHOHL LLP 255 EAST FIFTH STREET CINCINNATI, OH 45202 UNITED STATES april.besl@dinslaw.com
Submission	Motion to Compel Discovery
Filer's Name	April L Besl
Filer's e-mail	april.besl@dinslaw.com
Signature	/april l besl/
Date	09/22/2011
Attachments	Motion to Compel.PDF ( 7 pages )(313980 bytes ) Exhibit 1.pdf ( 10 pages )(266204 bytes ) Exhibit 2.pdf ( 9 pages )(261358 bytes ) Exhibit 3.PDF ( 39 pages )(1882137 bytes ) Exhibit 4.PDF ( 63 pages )(3288057 bytes ) Exhibit 5.pdf ( 2 pages )(136042 bytes ) Exhibit 6.pdf ( 3 pages )(134676 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**TRADEMARK TRIAL AND APPEAL BOARD**

**CHRISTIAN M. ZIEBARTH,**

**Petitioner,**

**vs.**

**DEL TACO LLC**

**Respondent.**

**Reg. No. 1,043,729**  
**Cancellation No. 92053501**

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**RESPONDENT DEL TACO LLC'S MOTION TO COMPEL UNDER RULE 2.120(E)  
AND MOTION TO TEST THE SUFFICIENCY OF PETITIONER'S RESPONSES TO  
ADMISSION REQUESTS UNDER RULE 2.120(H)**

Pursuant to Rule 2.120(e) of the Trademark Rules of Practice, Respondent Del Taco LLC ("Del Taco"), by its counsel, hereby moves for an order compelling the production of documents as well as answers to certain interrogatories which Petitioner Christian Ziebarth ("Petitioner") refuses to produce. Further, pursuant to Rule 2.120(h) of the Trademark Rules of Practice, Respondent hereby moves for a determination of the sufficiency of Petitioner's Answers to Respondents Admission Requests Nos. 1-72.

A copy of Respondent's First Set of Interrogatories and Requests for Production of Documents to Petitioner and First Set of Requests for Admission to Petitioner are attached hereto as Exhibits 1 and 2. A copy of Petitioner's Responses and Objections thereto are attached as Exhibits 3 and 4.

Respondent Del Taco LLC has made a good faith attempt to resolve the issues presented in this motion. Attached as Exhibit 5 is a copy of correspondence from Respondent's counsel to Petitioner's counsel, dated August 11, 2011, requesting reconsideration of Petitioner's objections. Attached as Exhibit 6 is Petitioner's response refusing to respond further.

The grounds for this motion are set forth below.

## **BRIEF IN SUPPORT**

### **I. INTRODUCTION AND BACKGROUND**

This is a cancellation proceeding involving Respondent Del Taco's U.S. Registration No. 1,043,729 for the mark NAUGLES for "*restaurant services*." Petitioner claims standing based on his ownership of U.S. Application Serial No. 85/040746 for NAUGLES for "*cafeteria and restaurant services*." That application was filed on May 17, 2010, based upon his alleged *bona fide* intent to use the mark.

Discovery in the proceeding opened on March 23, 2011. On April 20, 2011, Del Taco served Petitioner with Interrogatories, Document Requests, and Requests for Admission. See Exhibits 1-2. Petitioner's responses were due on May 20, 2011, however the parties agreed to a three-week extension on all open discovery requests on May 3, 2011, thus extending the due date for Petitioner's responses to June 10, 2011. However, on the day they were due, Petitioner contacted Del Taco requesting an additional 30-days to respond to the discovery requests. Del Taco agreed to Petitioner's request making the responses due on July 11, 2011.

After nearly two months in extensions, Petitioner responded to the outstanding discovery requests on July 11, 2011. Petitioner objected to every single discovery request propounded by Del Taco and only produced a handful of documents printed from the US Trademark Office website. Petitioner's objections alleged that every single discovery request propounded by Del Taco was vague, ambiguous, unduly burdensome, overly broad, sought information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, outside the allowable scope of discovery, and not related to any claim or defense which therefore meant Petitioner was not required to respond.

After a careful review of the responses and documents produced, Del Taco determined that the responses were deficient. On August 11, 2011 Del Taco sent a letter to Petitioner requesting that Petitioner reconsider its responses and comply fully with the requests. See Exhibit 5. Counsel for Petitioner responded on August 21, 2011 refusing to respond further. See Exhibit 6. The parties thereafter entered into settlement discussions which have proved unsuccessful to date, leading to the filing of this motion by Del Taco.

This motion seeks an order compelling Petitioner to respond to Interrogatories 1-15 and Document Requests 1-26 and a determination of the sufficiency of Petitioner's Responses to Admission Requests Nos. 1-72.

## **II. ARGUMENT**

### **A. Interrogatories No. 1-15, Document Requests 1-26, and Requests for Admissions Nos. 1-32.**

Del Taco's Interrogatories Nos. 1-15, Document Requests 1-26, and Admission Requests Nos. 1-32 seek discovery regarding Petitioner's selection, adoption, use, and planned use of his pleaded mark for the services identified in his application. Specifically, Interrogatories Nos. 1-15, Document Requests 1-26, and Admission Requests Nos. 1-32 inquire into and request documentation regarding the planned manufacturing, marketing, locations, channels of trade, target markets, target consumer bases, and funding channels Petitioner currently uses or intends to use in connection with his pleaded mark. Similarly, Interrogatory No. 6 inquires as to any licensing by Petitioner to third parties which may currently be making use of his pleaded mark in connection with the claimed *restaurant and cafeteria services* and could support the application.

Information and documentation as to Petitioner's adoption, selection, and use of his pleaded mark is clearly discoverable under the applicable rules. See TBMP §§ 414(4) and 414(5); Federal Rule of Civil Procedure 25; *see also Miller & Fink Corp. v. Servicemaster Hospital, Corp.*, 184 USPQ 495, 496 (TTAB 1975); *Georgia-Pacific Corporation v. Great*

*Plains Bag Co.*, 190 USPQ 193, 195-96 (TTAB 1976) (requiring cancellation petitioner to respond to discovery requests seeking information as to use). A party in a cancellation proceeding can take discovery as to any matter which may serve as a basis for any additional defense therein. See TMBP § 402.01; Federal Rule of Civil Procedure 26(b)(1). Here, the information sought by Del Taco is relevant to several potential affirmative and equitable defenses to the cancellation petition filed by Petitioner.

First, the existence or non-existence of this information and documents is clearly relevant to the issue of whether Petitioner has standing to bring his cancellation petition. The element of standing is a threshold issue which must be established by a petitioner in **every** *inter partes* case. See *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982) ("The facts regarding standing ... must be affirmatively proved. Accordingly, [petitioner] is not entitled to standing solely because of the allegations in its [pleading]"). While a likelihood of confusion rejection on a pending application can establish standing generally, a respondent can call into question such standing if evidence arises to the contrary during the proceeding. *Id.* at 189-90.

Petitioner has based his standing on his ownership of an intent to use trademark application. Interrogatories Nos. 1-15, Document Requests 1-26, and Admission Requests Nos. 1-32 are clearly relevant to the issue of whether Petitioner did indeed have a *bona fide* intent to use the mark NAUGLES in commerce when he filed his application. A mere application or statements that a party has a *bona fide* intent to use absent documentation is clear evidence that Petitioner did not have the required *bona fide* intent when he filed his pleaded application. See *Commodore Electronics Ltd. V. CBM Kabushiki Kaisha*, 26 USPQ 2d 1503 (TTAB 1993); *The Saul Zaentz Company dba Tolkien Enterprises v. Joseph M. Bumb*, 95 USPQ 2d 1723 (TTAB 2010).

Furthermore, Petitioner's adoption, selection, first use, and plans of his pleaded mark, as reflected in Interrogatories Nos. 1-15, Document Requests 1-26, and Admission Requests Nos. 1-32, are relevant to other possible equitable defenses that can be asserted by Del Taco, such as unclean hands. Since these equitable defenses cannot be pleaded unless *specific conduct* which constitutes the bases for the defense is alleged, discovery is often necessary prior to formally pleading the defenses. See *e.g. Lincoln Logs Ltd. v. Lincoln Precut Log Homes, Inc.*, 971 F.2d 732, 23 USPQ 2d 1701 (Fed. Cir. 1992); *Midwest Plastic Fabricators Inc. v. Underwriters Laboratories Inc.*, 5 USPQ 2d 1067 (TTAB 1987); *Heisch v. Katy Bishop Productions Inc.*, 45 USPQ 2d 1219 (N.D. Ill. 1997).

Thus, the information and documentation sought by Del Taco in Interrogatories 1-15 and Document Requests 1-26 is clearly discoverable under the applicable rules and should be produced by Petitioner. Further, since Admission Requests Nos. 1-32 also seek the same relevant and discoverable information, Petitioner's responses to these requests are not sufficient.

**B. Requests for Admission Nos. 33-67**

Respondent Del Taco's Admission Requests Nos. 33-67 seek admissions regarding whether Petitioner is the owner and/or operator of numerous social media sites purportedly related to Petitioner. Moreover, the requests seek admissions regarding whether Petitioner has discussed Petitioner's intended or current use of his pleaded mark on these sites. This information is likewise relevant to Petitioner's *bona fide* intent to use the mark and other potential equitable defenses that are available to Del Taco. See TBMP § 402.01; Federal Rule of Civil Procedure 26(b)(1).

Specifically, statements made on the social media sites purportedly owned and operated by Petitioner about Petitioner's adoption, selection, use, or planned use of his pleaded mark or, alternatively, the lack of any such statements, may demonstrate that

Petitioner did not have the required *bona fides* when he filed the application and could also provide further basis for other equitable defenses available to Del Taco.

Thus, Admission Requests Nos. 33-67 manifestly seek relevant information under the law, and Petitioner's responses to these requests are not sufficient.

**C. Requests for Admission Nos. 68-72**

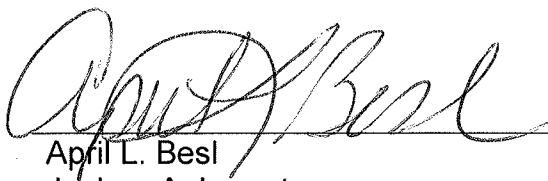
Admission Requests Nos. 68-72 again relate to Petitioner's standing to bring this proceeding and other potential equitable defenses, including unclean hands. Requests 68-72 seek admissions regarding Petitioner's knowledge of Del Taco's ownership of the NAUGLES mark, knowledge of Del Taco's corresponding NAUGLES registration, and whether the filing of Petitioner's application was with such knowledge. These are again highly relevant to this proceeding. If Petitioner filed his application with full knowledge of Del Taco's ownership and registration of the NAUGLES mark that is clearly relevant to certain equitable defenses Del Taco could assert in this proceeding, including unclean hands. See TBMP § 402.01; Federal Rule of Civil Procedure 26(b)(1). This would be especially true if the evidence also shows that Petitioner filed his application without the requisite *bona fide* intent to use the pleaded mark.

Therefore, since Admission Requests Nos. 68-72 seek relevant and discoverable information, Petitioner's responses to these requests are not sufficient.

**III. CONCLUSION**

For the foregoing reasons, Respondent Del Taco respectfully requests that the Board order Petitioner Christian Ziebarth to serve full, complete, and proper responses to Interrogatories 1-15, Document Requests 1-26, and Admission Requests Nos. 1-72.

Dated: **September 22, 2011**



April L. Besl  
Joshua A. Lorentz  
DINSMORE & SHOHL LLP  
255 East Fifth Street  
Cincinnati, Ohio 45202  
(513) 977-8527-direct  
(513) 977-8141-fax  
april.besl@dinslaw.com

*Attorneys for Respondent  
Del Taco LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was sent by certified first-class mail, on this 22nd day of September, 2011, to Susan M. Natland and Gregory Phillips, Knobbe Martens Olson & Bear LLP, 2040 Main Street, 14th Floor, Irvine, California 92614, Susan.Natland@kmob.com and Gregory.Phillips@kmob.com.



April L. Besl



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**TRADEMARK TRIAL AND APPEAL BOARD**

**CHRISTIAN M. ZIEBARTH,**

**Petitioner,**

**vs.**

**DEL TACO LLC**

**Respondent.**

**Reg. No. 1,043,729**  
**Cancellation No. 92053501**

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**RESPONDENT'S FIRST SET**  
**OF INTERROGATORIES AND REQUESTS FOR**  
**PRODUCTION OF DOCUMENTS TO PETITIONER**

In accordance with Rules 33 and 34 of the Federal Rules of Civil Procedure and Rule 2.116 of the Trademark Rules of Practice, Petitioner is called upon to fully respond to the document requests and interrogatories set forth below within thirty (30) days of the date of service. Applicant requests that all written responses and all responsive documents be produced at the offices of Dinsmore & Shohl LLP, 1900 Chemed Center, 255 East Fifth Street, Cincinnati, Ohio 45202.

**DEFINITIONS**

- A. As used herein, the term "Petitioner," "You" and "Your" includes the individual Christian M. Ziebarth and any of his employees, agents, and representatives thereof.
- B. As used herein, the term "Registrant" or "Del Taco" includes Del Taco LLC, its predecessors in interest, divisions, subsidiaries and related organizations, and the officers, directors, employees, agents and representatives thereof.
- C. As used herein, the term "the Petitioner's NAUGLES Mark" refers to the subject of Application Serial No. 85/040,746 in the name of Christian M. Ziebarth.

D. As used herein, the term “Petitioner’s NAUGLES Products” includes those products and services which Petitioner offers for sale or plans to offer for sale under the NAUGLES mark.

E. As used herein, “and” as well as “or” shall be construed disjunctively and conjunctively as necessary in order to bring within the scope of the request all documents which might otherwise be construed to be outside its scope.

F. As used herein, the singular shall include the plural and the present tense shall include the past tense and vice versa in order to bring within the scope of the request all documents which might otherwise be construed to be outside its scope.

### **INSTRUCTIONS**

1. If Petitioner objects to the Interrogatories and Document Requests below based on a claim of privilege or a claim that such Interrogatories or Document Requests require the disclosure of attorney work product, state the nature of the privilege claimed and the nature of the information over which the privilege is claimed.

2. Every interrogatory herein shall be deemed a continuing interrogatory, and You are to supplement Your answers promptly, if and when You obtain relevant information in addition to, or in any way inconsistent with, Your initial answer to any such interrogatory.

3. If Petitioner is aware that a document or group of documents once existed but has been destroyed, this should be stated, and it should also be stated who destroyed it, why it was destroyed and the circumstances under which it was destroyed.

## **INTERROGATORIES**

### **Interrogatory No. 1:**

Describe in detail the nature of the present business of Petitioner in connection with Petitioner's NAUGLES Mark.

**ANSWER:**

### **Interrogatory No. 2:**

Describe in detail all activities undertaken by Petitioner to utilize Petitioner's NAUGLES Mark prior to the filing of Petitioner's NAUGLES Mark with the United States Patent and Trademark Office.

**ANSWER:**

### **Interrogatory No. 3:**

Identify each person with any information concerning Petitioner's selection of Petitioner's NAUGLES Mark.

**ANSWER:**

### **Interrogatory No. 4:**

Describe in detail the circumstances under which Petitioner decided to select Petitioner's NAUGLES Mark for use in conjunction with Petitioner's business.

**ANSWER:**

Interrogatory No. 5:

Identify all products or services planned to be offered by Petitioner under Petitioner's NAUGLES Mark.

**ANSWER:**

Interrogatory No. 6:

Identify all transfers of rights in Petitioner's NAUGLES Mark granted by or to Petitioner.

**ANSWER:**

Interrogatory No. 7:

State whether Petitioner's NAUGLES Products are currently offered to the public.

**ANSWER:**

Interrogatory No. 8:

Identify the territorial areas in the United States where Petitioner plans to offer Petitioner's NAUGLES Products.

**ANSWER:**

Interrogatory No. 9:

Identify the territorial areas in the United States where Petitioner plans to manufacture Petitioner's NAUGLES Products.

**ANSWER:**

Interrogatory No. 10:

Identify the channels of trade through which Petitioner plans to offer Petitioner's NAUGLES Products.

**ANSWER:**

Interrogatory No. 11:

Identify the representative outlets through which Petitioner plans to offer Petitioner's NAUGLES Products.

**ANSWER:**

Interrogatory No. 12:

Identify the target market to which Petitioner plans to offer Petitioner's NAUGLES Products.

**ANSWER:**

Interrogatory No. 13:

Identify the target customer base to which Petitioner plans to offer Petitioner's NAUGLES Products.

**ANSWER:**

Interrogatory No. 14:

Identify all sources of funding to finance Petitioner's NAUGLES Products.

**ANSWER:**

Interrogatory No. 15:

Identify the marketing channels through which Petitioner plans to promote Petitioner's NAUGLES Products.

**ANSWER:**

**DOCUMENT REQUESTS**

1. All documents and things which refer to Petitioner's creation and selection of Petitioner's NAUGLES Mark.
2. All documents and things which refer to Petitioner's decision to apply to register Petitioner's NAUGLES Mark with the United States Patent and Trademark Office.
3. All documents and things which refer to any clearance searches Petitioner performed for Petitioner's NAUGLES Mark.

4. All documents and things evidencing Petitioner's current use of Petitioner's NAUGLES Mark.

5. All documents and things evidencing Petitioner's intent to use Petitioner's NAUGLES Mark when Petitioner filed its application with the United States Patent and Trademark Office.

6. All documents and things which refer to any products or services Petitioner offers for sale and/or plans to offer for sale under Petitioner's NAUGLES Mark.

7. All documents and things which refer to any licensing agreements Petitioner has entered into with respect to Petitioner's NAUGLES Mark.

8. All documents and things which refer to the territorial areas in the United States where Petitioner offers or plans to offer Petitioner's NAUGLES Products.

9. All documents and things which refer to the territorial areas in the United States where Petitioner manufactures or plans to manufacture Petitioner's NAUGLES Products.

10. All documents and things which refer to the channels of trade through which Petitioner offers or plans to offer Petitioner's NAUGLES Products.

11. All documents and things which refer to representative outlets through which Petitioner offers or plans to offer Petitioner's NAUGLES Products.

12. All documents and things which refer to representative customers who have or are intended to purchase Petitioner's NAUGLES Products.

13. All documents and things which refer to the target market Petitioner has identified for Petitioner's NAUGLES Products.

14. All documents and things which refer to any source of sponsorship, funding, or other financial support for the creation, distribution, manufacturing, marketing, promotion, and/or sale of Petitioner's NAUGLES Products.

15. All documents and things which refer to Petitioner's present and/or planned marketing plans for Petitioner's NAUGLES Products including, but not limited to specimens of all advertising and promotional materials which relate to or refer to Petitioner's NAUGLES Products.

16. All documents and things from any promotional outlet, including but not limited to, magazines, blogs, newspapers, social media sites, television, radio, catalogues, circulars, leaflets, sales or promotional literature, brochures, bulletins, fliers, signs, sales displays, posters, and/or other materials in which Petitioner's NAUGLES Products have been promoted and/or may be promoted in the future.

17. All documents and things which refer to Petitioner's present and/or planned manufacturing processes and supply chains for Petitioner's NAUGLES Products.

18. All documents and things which refer to Petitioner's current shipping processes and or planned shipping processes for Petitioner's NAUGLES Products.

19. All documents and things which refer to Petitioner's monthly expenditures to date and planned future expenditures with respect to Petitioner's NAUGLES Products.

20. All documents and things which refer to any consumer or market testing Petitioner has received or conducted relating to Petitioner's NAUGLES Products.

21. All documents and things which refer to any consumer or market testing Petitioner has received or conducted relating to Petitioner's NAUGLES Mark.



22. All documents and things, including but not limited to, communications with third parties, social media pages, and blogs which refer to Del Taco, Del Taco's marks, or Del Taco's goods or services.

23. All documents and things, including but not limited to, communications with third parties, social media pages, and blogs which refer to Petitioner's NAUGLES Mark.

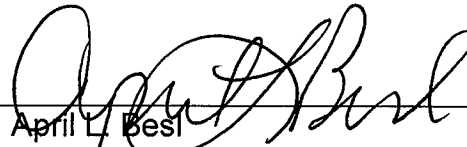
24. All documents and things, including but not limited to, communications with third parties, social media pages, and blogs which refer to Petitioner's NAUGLES Products.

25. All documents and things, including but not limited to, plans, specifications, proposals, correspondence and memoranda, and samples that refer to the design, specifications, packaging, locations, recipes, format, and ingredients for Petitioner's NAUGLES Products.

26. All documents which refer to each and every discussion, correspondence, dispute, controversy, or proceeding of any kind or nature between Petitioner and any third party which involved Petitioner's NAUGLES Mark as applied for or any common law variation thereof.

27. All documents and things on which Petitioner relied in making its allegations contained in Petitioner's PETITION FOR CANCELLATION.

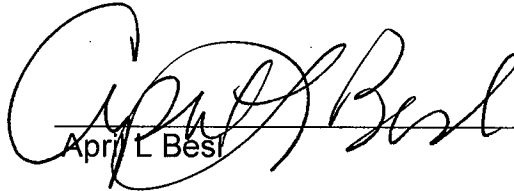
Dated: **April 20, 2011**

  
April L. Besl  
Joshua A. Lorentz  
DINSMORE & SHOHL LLP  
255 East Fifth Street  
Cincinnati, Ohio 45202  
(513) 977-8527-direct  
(513) 977-8141-fax  
april.besl@dinslaw.com

Attorneys for Respondent  
Del Taco LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was sent by email, on this 20th day of April, 2011, to Susan M. Natland and Gregory Phillips, Knobbe Martens Olson & Bear LLP, 2040 Main Street, 14th Floor, Irvine, California 92614, Susan.Natland@kmob.com and Gregory.Phillips@kmob.com.

  
April L. Besl

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
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**CHRISTIAN M. ZIEBARTH,**

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**DEL TACO LLC**

**Respondent.**

**Reg. No. 1,043,729**  
**Cancellation No. 92053501**

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**RESPONDENT'S FIRST SET**  
**OF REQUESTS FOR ADMISSION TO PETITIONER**

In accordance with Rule 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Petitioner is called upon to fully respond to the following Requests for Admissions within thirty (30) days of the date of service.

**DEFINITIONS**

A. As used herein, the term "Petitioner," "You" and "Your" includes the individual Christian M. Ziebarth and any of his employees, agents, and representatives thereof.

B. As used herein, the term "Registrant" or "Del Taco" includes Del Taco LLC, its predecessors in interest, divisions, subsidiaries and related organizations, and the officers, directors, employees, agents and representatives thereof.

C. As used herein, the term "the Petitioner's NAUGLES Mark" refers to the subject of Application Serial No. 85/040,746 in the name of Christian M. Ziebarth.

D. As used herein, the term "Petitioner's NAUGLES Products" includes those products and services which Petitioner offers for sale or plans to offer for sale under the NAUGLES mark.

## **INSTRUCTIONS**

In responding to each request for admission, Petitioner must either admit or deny the statement, or must provide detailed reasons as to why the statement cannot truthfully be admitted or denied, as required by Rule 36 of the Federal Rules of Civil Procedure. In addition, Registrant is required to explain in detail any qualifications to its responses.

## **ADMISSION REQUESTS**

1. Petitioner is not currently offering any products under Petitioner's NAUGLES Mark.
2. Petitioner has not previously offered any products under Petitioner's NAUGLES Mark.
3. Petitioner is not currently offering any services under Petitioner's NAUGLES Mark.
4. Petitioner has not previously offered any services under Petitioner's NAUGLES Mark.
5. Petitioner was not offering cafeteria and restaurant services under Petitioner's NAUGLES Mark as of May 17, 2010.
6. Petitioner is not currently offering cafeteria and restaurant services under Petitioner's NAUGLES Mark.
7. Petitioner has not entered into any licensing agreements with third parties in connection with Petitioner's NAUGLES Mark.
8. Petitioner has not obtained any loans necessary to finance the manufacturing, sale and distribution of Petitioner's NAUGLES Products.

9. Petitioner has not entered into a partnership to finance the manufacturing, sale and distribution of Petitioner's NAUGLES Products.

10. Petitioner has not raised any funds to finance the manufacturing, sale and distribution of Petitioner's NAUGLES Products.

11. Petitioner has not created any marketing plans for Petitioner's NAUGLES Products.

12. Petitioner has not made any monthly expenditures to date for the purpose of manufacturing or preparing to manufacture Petitioner's NAUGLES Products.

13. Petitioner has not conducted any consumer testing with respect to Petitioner's NAUGLES Products.

14. Petitioner has not conducted any market testing with respect to Petitioner's NAUGLES Products.

15. Petitioner has not conducted any consumer testing with respect to Petitioner's NAUGLES Mark.

16. Petitioner has not conducted any market testing with respect to Petitioner's NAUGLES Mark.

17. Petitioner has not entered into any contracts with third parties for manufacturing of Petitioner's NAUGLES Products.

18. Petitioner has not entered into any contracts with third parties for ingredients to be used in Petitioner's NAUGLES Products.

19. Petitioner has not entered into any contracts with third parties for shipping of Petitioner's NAUGLES Products.

20. Petitioner has not entered into any contracts with third parties for the sale of Petitioner's NAUGLES Products.

21. Petitioner has not entered into any contracts with third parties to operate cafeterias offering Petitioner's NAUGLES Products.

22. Petitioner has not entered into any contracts with third parties to operate restaurants offering Petitioner's NAUGLES Products.

23. Petitioner has not entered into any contracts with third parties for locations where Petitioner's NAUGLES Products will be offered.

24. Petitioner has not entered into any contracts with third parties for marketing of Petitioner's NAUGLES Products.

25. Petitioner has not entered into any negotiations with third parties for manufacturing of Petitioner's NAUGLES Products.

26. Petitioner has not entered into any negotiations with third parties for ingredients to be used in Petitioner's NAUGLES Products.

27. Petitioner has not entered into any negotiations with third parties for shipping of Petitioner's NAUGLES Products.

28. Petitioner has not entered into any negotiations with third parties for the sale of Petitioner's NAUGLES Products.

29. Petitioner has not entered into any negotiations with third parties to operate cafeterias offering Petitioner's NAUGLES Products.

30. Petitioner has not entered into any negotiations with third parties to operate restaurants offering Petitioner's NAUGLES Products.

31. Petitioner has not entered into any negotiations with third parties for locations where Petitioner's NAUGLES Products will be offered.

32. Petitioner has not entered into any negotiations with third parties for marketing of Petitioner's NAUGLES Products.

33. The website located at the domain name <http://www.mexfoodla.com/> is owned by Petitioner.

34. The website located at the domain name <http://www.mexfoodla.com/> is operated by Petitioner.

35. All posts by "ChristianZ" at the domain name <http://www.mexfoodla.com/> are by Petitioner.

36. Petitioner has not discussed Petitioner's NAUGLES Products on <http://www.mexfoodla.com/>.

37. Petitioner has not discussed Petitioner's NAUGLES Mark on <http://www.mexfoodla.com/>.

38. The website located at the domain name <http://ocfoodblogs.blogspot.com/> is owned by Petitioner.

39. The website located at the domain name <http://ocfoodblogs.blogspot.com/> is operated by Petitioner.

40. All posts by "ChristianZ" at the domain name [http://ocfoodblogs.blogspot.com](http://ocfoodblogs.blogspot.com/) are by Petitioner.

41. Petitioner has not discussed Petitioner's NAUGLES Products on [http://ocfoodblogs.blogspot.com](http://ocfoodblogs.blogspot.com/).

42. Petitioner has not discussed Petitioner's NAUGLES Mark on <http://ocfoodblogs.blogspot.com>.

43. The website located at the domain <http://warmth-of-the-sun.blogspot.com/> is owned by Petitioner.

44. The website located at the domain <http://warmth-of-the-sun.blogspot.com/> is operated by Petitioner.

45. All posts by "ChristianZ" at the domain name <http://warmth-of-the-sun.blogspot.com/> are by Petitioner.

46. Petitioner has not discussed Petitioner's NAUGLES Products on <http://warmth-of-the-sun.blogspot.com/>.

47. Petitioner has not discussed Petitioner's NAUGLES Mark on <http://warmth-of-the-sun.blogspot.com/>.

48. The website located at the domain <http://ocmexfood.blogspot.com/> is owned by Petitioner.

49. The website located at the domain <http://ocmexfood.blogspot.com/> is operated by Petitioner.

50. All posts by "ChristianZ" at the domain name <http://ocmexfood.blogspot.com/> are by Petitioner.

51. Petitioner has not discussed Petitioner's NAUGLES Products on <http://ocmexfood.blogspot.com/>.

52. Petitioner has not discussed Petitioner's NAUGLES Mark on <http://ocmexfood.blogspot.com/>.



53. The website located at the domain <http://www.christianziebarth.com/> is owned by Petitioner.

54. The website located at the domain <http://www.christianziebarth.com/> is operated by Petitioner.

55. All information posted at the domain <http://www.christianziebarth.com/> is posted by Petitioner.

56. Petitioner has not discussed Petitioner's NAUGLES Products on <http://www.christianziebarth.com/>.

57. Petitioner has not discussed Petitioner's NAUGLES Mark on <http://www.christianziebarth.com/>.

58. The Facebook page located at <http://www.facebook.com/ocmexfood?v=wall> is owned by Petitioner.

59. The Facebook page located at <http://www.facebook.com/ocmexfood?v=wall> is operated by Petitioner.

60. All posts under the name "OC Mex Food" on the Facebook page located at <http://www.facebook.com/ocmexfood?v=wall> are by Petitioner.

61. Petitioner has not discussed Petitioner's NAUGLES Products on <http://www.facebook.com/ocmexfood?v=wall>.

62. Petitioner has not discussed Petitioner's NAUGLES Mark on <http://www.facebook.com/ocmexfood?v=wall>.

63. The Twitter page located at <http://twitter.com/#!/cmziebarth> is owned by Petitioner.

64. The Twitter page located at <http://twitter.com/#!/cmziebarth> is operated by Petitioner.

65. All posts under the name “cmziebarth” on <http://twitter.com/#!/cmziebarth> are by Petitioner.

66. Petitioner has not discussed Petitioner’s NAUGLES Products on <http://twitter.com/#!/cmziebarth>.

67. Petitioner has not discussed Petitioner’s NAUGLES Mark on <http://twitter.com/#!/cmziebarth>.

68. Apart from its current NAUGLES application, Petitioner has not applied to register the NAUGLES mark with any governmental entity.

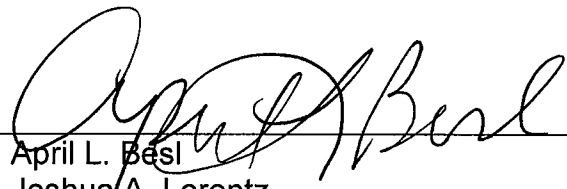
69. Petitioner took the idea for Petitioner’s NAUGLES Products from Registrant.

70. Petitioner was aware of Registrant’s use of the NAUGLES mark prior to filing Petitioner’s NAUGLES Mark with the United States Patent and Trademark Office.

71. Petitioner was aware of Registrant’s registration of the NAUGLES mark prior to filing Petitioner’s NAUGLES Mark with the United States Patent and Trademark Office.

72. Petitioner selected Petitioner’s NAUGLES Mark for Petitioner’s NAUGLES Products with full knowledge of Registrant’s ownership and use of NAUGLES.

Dated: April 20, 2011



April L. Besl  
Joshua A. Lorentz  
DINSMORE & SHOHL LLP  
255 East Fifth Street  
Cincinnati, Ohio 45202  
(513) 977-8527-direct  
(513) 977-8141-fax  
april.besl@dinslaw.com

Attorneys for Respondent  
Del Taco LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was sent by email, on this 20th day of April, 2011, to Susan M. Natland and Gregory Phillips, Knobbe Martens Olson & Bear LLP, 2040 Main Street, 14th Floor, Irvine, California 92614, Susan.Natland@kmob.com and Gregory.Phillips@kmob.com.



April L. Besl

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Christian M. Ziebarth,  
Petitioner,  
  
v.  
  
Del Taco, LLC,  
Respondent.

Cancellation No.  
92053501

**PETITIONER'S RESPONSE TO RESPONDENT'S FIRST SET OF  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to the Rules of Practice of the United States Patent and Trademark Office, and Rule 33 of the Federal Rules of Civil Procedure ("FRCP") and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Christian M. Ziebarth ("Petitioner") hereby responds to Del Taco, LLC's ("Respondent") First Set of Interrogatories and Requests for Production of Documents ("Requests" or "Request") as set forth below.

**GENERAL OBJECTIONS TO INTERROGATORIES**

The following General Objections to Respondent's Interrogatories are incorporated by reference in response to each Interrogatory set forth below and are not waived with respect to any response.

1. Petitioner generally objects to Respondent's Interrogatories to the extent they seek disclosure of any information protected, privileged or immune, or otherwise exempt from discovery pursuant to applicable state and federal statutes, the FRCP, case law, regulations, administrative

orders, or any other applicable rules, decisions, or laws including, but not limited to, information protected by the attorney-client privilege, the work product doctrine or other applicable privilege.

2. Petitioner generally objects to Respondent's Interrogatories to the extent that they seek the disclosure of information that is not relevant to any party's claim or defense.

3. Petitioner generally objects to Respondent's Interrogatories, including the instructions and definitions, to the extent they purport to impose upon Petitioner obligations greater than those imposed by the applicable FRCP, 37 CFR § 2.120(d), or other applicable rules or law.

4. Petitioner generally objects to Respondent's Interrogatories to the extent that they seek information that is not calculated to lead to the discovery of admissible evidence or to the extent that Respondent's Interrogatories seek the disclosure of information, documents or things beyond the scope of discovery as provided by the applicable FRCP, 37 CFR § 2.120(d), or other applicable rules or law.

5. Some of Respondent's Interrogatories contain discrete subparts. To the extent Petitioner considers any Interrogatory having discrete subparts to constitute a single Interrogatory, Petitioner objects to each such Interrogatory as being contrary to FRCP 33(a) and 37 CFR § 2.120(d).

6. Petitioner objects to each of Respondent's Interrogatories to the extent that they seek information that is a matter of public record or otherwise available to Respondent without imposing undue burden on Petitioner.

7. Only the express and overt meaning of these responses is intended. No response should be construed to contain implied statements, representations, or admissions of any kind. The fact that Petitioner has responded or objected to an Interrogatory, or has produced documents in response to an Interrogatory, should not be understood as an admission that Petitioner accepts or admits the existence of any "fact" set forth in or assumed by that Interrogatory.

8. Words and terms used in the following responses shall be construed in accordance with their normal meanings and connotations, and shall in no way be interpreted as terms of art or statutorily defined terms used in the trademark or unfair competition laws. Petitioner specifically disavows any such meaning or connotation that might be accorded to such terms. Likewise, Petitioner objects to Respondent's definitions and instructions to the extent that they make individual Interrogatories vague, ambiguous, or unintelligible by attributing a novel meaning to an ordinary word or multiple meanings to a single word.

9. Petitioner generally objects to Respondent's Interrogatories to the extent they seek information concerning "all" or "any" person or entity concerning a particular subject on the grounds that Petitioner would be required to search for information from every person or entity. Petitioner objects to performing searches of such breadth on the grounds of undue burden and expense. In its search for relevant documents, Petitioner has made, or will make, a reasonable search as required by the FRCP.

10. Petitioner generally objects to Respondent's Interrogatories to the extent that they seek information, documents or things not in Petitioner's possession, custody or control. Petitioner's responses are based upon information and writings presently available to Petitioner.

11. In response to Respondent's Interrogatories, Petitioner may exercise its option to produce documents from which the answers to the Interrogatories may be derived or ascertained, in accordance with FRCP 33(d).

12. As to all matters referred to in these responses to Respondent's Interrogatories, investigation and discovery continues. Accordingly, Petitioner reserves his right to modify these responses and to present in any proceedings and at trial any further information and documents obtained during discovery as well as during the testimony and trial periods and preparation for the testimony and trial periods. Further discovery, independent investigation, and legal research and

analysis may supply additional facts adding meaning to known facts, as well as establish entirely new factual conclusions or legal conclusions, all of which may lead to substantial additions to, changes in, and variations from the responses set forth herein. Petitioner reserves the right to produce any subsequently discovered evidence, facts, and/or documents, and to supplement or change its responses based on such information. Moreover, certain of Respondent's Interrogatories are premature in that they seek contentions or other information that Petitioner cannot provide at this stage of the case. Finally, certain of Respondent's Interrogatories are subject to specific objections and are therefore not the subject of legitimate discovery. The responses given herein are done so in a good faith effort to supply as much information as is presently known which should in no way lead to the prejudice of Petitioner in connection with further discovery, research or analysis.

#### **RESPONSE TO RESPONDENT'S FIRST SET OF INTERROGATORIES**

##### **INTERROGATORY NO. 1:**

Describe in detail the nature of the present business of Petitioner in connection with Petitioner's NAUGLES Mark.

##### **RESPONSE TO INTERROGATORY NO. 1:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter,

not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark).

**INTERROGATORY NO. 2:**

Describe in detail all activities undertaken by Petitioner to utilize Petitioner’s NAUGLES Mark prior to the filing of Petitioner’s NAUGLES Mark with the United States Patent and Trademark Office.

**RESPONSE TO INTERROGATORY NO. 2:**

Petitioner incorporates by this reference its General Objections to Respondent’s Interrogatories as if set forth fully herein. Petitioner also objects to this Interrogatory to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*,



2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**INTERROGATORY NO. 3:**

Identify each person with any information concerning Petitioner's selection of Petitioner's NAUGLES Mark.

**RESPONSE TO INTERROGATORY NO. 3:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner also objects to this Interrogatory to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**INTERROGATORY NO. 4:**

Describe in detail the circumstances under which Petitioner decided to select Petitioner's NAUGLES Mark for use in conjunction with Petitioner's business.

**RESPONSE TO INTERROGATORY NO. 4:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner also objects to this Interrogatory to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this interrogatory to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**INTERROGATORY NO. 5:**

Identify all products or services planned to be offered by Petitioner under Petitioner's NAUGLES Mark.

**RESPONSE TO INTERROGATORY NO. 5:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**INTERROGATORY NO. 6:**

Identify all transfers of rights in Petitioner's NAUGLES Mark granted by or to Petitioner.

**RESPONSE TO INTERROGATORY NO. 6:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action

based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**INTERROGATORY NO. 7:**

State whether Petitioner's NAUGLES Products are currently offered to the public.

**RESPONSE TO INTERROGATORY NO. 7:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the

nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**INTERROGATORY NO. 8:**

Identify the territorial areas in the United States where Petitioner plans to offer  
Petitioner's NAUGLES Products.

**RESPONSE TO INTERROGATORY NO. 8:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**INTERROGATORY NO. 9:**

Identify the territorial areas in the United States where Petitioner plans to manufacture  
Petitioner's NAUGLES Products.

**RESPONSE TO INTERROGATORY NO. 9:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also

objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**INTERROGATORY NO. 10:**

Identify the channels of trade through which Petitioner plans to offer Petitioner's NAUGLES Products.

**RESPONSE TO INTERROGATORY NO. 10:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the

nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**INTERROGATORY NO. 11:**

Identify the representative outlets through which Petitioner plans to offer Petitioner's NAUGLES Products.

**RESPONSE TO INTERROGATORY NO. 11:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**INTERROGATORY NO. 12:**

Identify the target market to which Petitioner plans to offer Petitioner's NAUGLES Products.

**RESPONSE TO INTERROGATORY NO. 12:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also

objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**INTERROGATORY NO. 13:**

Identify the target customer base to which Petitioner plans to offer Petitioner's NAUGLES Products

**RESPONSE TO INTERROGATORY NO. 13:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the



nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**INTERROGATORY NO. 14:**

Identify all sources of funding to finance Petitioner's NAUGLES Products.

**RESPONSE TO INTERROGATORY NO. 14:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**INTERROGATORY NO. 15:**

Identify the marketing channels through which Petitioner plans to promote Petitioner's NAUGLES Products.

**RESPONSE TO INTERROGATORY NO. 15:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated

to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

### **GENERAL OBJECTIONS TO RESPONDENT'S REQUESTS FOR PRODUCTION OF DOCUMENTS**

The following General Objections to Respondent's Requests for Production of Documents are incorporated by reference in response to each and every request set forth below and are not waived with respect to any response. The following responses are based upon information and writings presently available to Petitioner.

1. Petitioner objects generally to the instructions and definitions in the Requests to the extent that those instructions and definitions fail to comply with or impose obligations in excess of Rule 34 of the Federal Rules of Civil Procedure.

2. Petitioner objects to the Requests to the extent they seek "all documents" concerning a particular subject on the grounds that performing searches of such breadth create an undue burden and expense on Petitioner. Searching for relevant documents, Petitioner has made, and will make, inquiry of all persons who are reasonably likely to have such documents.

3. Petitioner objects to the Requests to the extent that it calls for the production of information, documents or things protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or other limitation on discovery. Petitioner has stated its privilege objections expressly in its response to each request

that would, in its view, reasonably be interpreted to encompass privileged information, documents, or things. Should any other request encompass privileged information, documents, or things, however, Petitioner hereby asserts this general objection. Moreover, should any such response by Petitioner occur, it was inadvertent and shall not constitute a waiver of privilege or of Petitioner's right to object during this litigation or otherwise to the use of any such information, documents, or things.

4. Petitioner objects to the Requests to the extent that they seek information, documents or things that are not relevant to the cancellation action, or are not reasonably calculated to lead to the discovery of admissible evidence.

5. Petitioner objects to the Requests to the extent that they seek information, documents or things not in Petitioner's possession, custody or control.

6. Petitioner objects to the Requests to the extent that they are overbroad, unduly burdensome, or fail to describe the information, documents or things sought with a reasonable degree of specificity. Petitioner will attempt to construe the terms and phrases used by Respondent in ways to give those terms and phrases meanings that will result in the production of relevant information, documents and things designed to lead to the discovery of admissible evidence.

7. Petitioner objects to the Requests to the extent that they seek private, privileged, and confidential commercial, financial, trade secret and/or proprietary business information. Petitioner may provide this information, if relevant, not obtainable by less intrusive means, and not privileged, subject to the Trademark Trial and Appeal Board Protective Order in place between the parties. Petitioner further objects to the Requests to the extent that they call for the production of information, documents, or things that Petitioner received or obtained from a third party under a non-disclosure agreement or any other obligation in the nature of a non-disclosure agreement.

8. Petitioner will make, or has made, a good faith, reasonable effort to search for such information, documents and things responsive to the Requests and, subject to its objections, will

identify or produce at an appropriate time, or has identified or produced such information, documents and things within its possession, custody or control.

9. Petitioner objects to each request to the extent that each request calls for the production or identification of attorney-client privilege and/or work product documents generated by Petitioner's counsel or its agents for internal use and/or privileged communications between or among Petitioner and its counsel since the commencement of this action. The applicability of the attorney-client privilege and/or work product doctrine to such documents is so clear and the burden of identifying each such document is so great that requiring Petitioner to do so would be so burdensome as to result in injustice and would be oppressive in that the burden imposed thereby would be incommensurate with the result sought by Respondent.

10. Petitioner has performed a diligent search for information, documents and things responsive to the Requests. Discovery is ongoing, however, and Petitioner's investigation is continuing. Therefore, Petitioner reserves its right to supplement its responses herein and its production with any responsive, non-privileged information, documents, or things that may be subsequently discovered.

**RESPONSE TO RESPONDENT'S FIRST REQUESTS**  
**FOR PRODUCTION OF DOCUMENTS**

**DOCUMENT REQUEST NO. 1:**

All documents and things which refer to Petitioner's creation and selection of Petitioner's NAUGLES Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 1:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further

objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 2:**

All documents and things which refer to Petitioner's decision to apply to register Petitioner's NAUGLES Mark with the United States Patent and Trademark Office.

**RESPONSE TO DOCUMENT REQUEST NO.2:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's

abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark).

**DOCUMENT REQUEST NO. 3:**

All documents and things which refer to any clearance searches Petitioner performed for Petitioner’s NAUGLES Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 3:**

Petitioner incorporates by this reference its General Objections to Respondent’s Requests as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4

(T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 4:**

All documents and things evidencing Petitioner's current use of Petitioner's NAUGLES Mark.

**RESPONSE TO DOCUMENT REQUEST NO.4:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 5:**

All documents and things evidencing Petitioner's intent to use Petitioner's NAUGLES Mark when Petitioner filed its application with the United States Patent and Trademark Office.

**RESPONSE TO DOCUMENT REQUEST NO.5:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 6:**

All documents and things which refer to any products or services Petitioner offers for sale and/or plans to offer for sale under Petitioner's NAUGLES Mark.

**RESPONSE TO DOCUMENT REQUEST NO.6:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the



discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 7:**

All documents and things which refer to any licensing agreements Petitioner has entered into with respect to Petitioner's NAUGLES Mark.

**RESPONSE TO DOCUMENT REQUEST NO.7:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing

expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 8:**

All documents and things which refer to the territorial areas in the United States where Petitioner offers or plans to offer Petitioner's NAUGLES Products.

**RESPONSE TO DOCUMENT REQUEST NO. 8:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 9:**

All documents and things which refer to the territorial areas in the United States where Petitioner manufactures or plans to manufacture Petitioner's NAUGLES Products.

**RESPONSE TO DOCUMENT REQUEST NO. 9:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 10:**

All documents and things which refer to the channels of trade through which Petitioner offers or plans to offer Petitioner's NAUGLES Products.

**RESPONSE TO DOCUMENT REQUEST NO.10:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is

vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 11:**

All documents and things which refer to representative outlets through which Petitioner offers or plans to offer Petitioner's NAUGLES products.

**RESPONSE TO DOCUMENT REQUEST NO. 11:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that

is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark).

**DOCUMENT REQUEST NO. 12:**

All documents and things which refer to representative customers who have or are intended to purchase Petitioner’s NAUGLES Products.

**RESPONSE TO DOCUMENT REQUEST NO.12:**

Petitioner incorporates by this reference its General Objections to Respondent’s Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark).

**DOCUMENT REQUEST NO. 13:**

All documents and things which refer to the target market Petitioner has identified for Petitioner's NAUGLES Products.

**RESPONSE TO DOCUMENT REQUEST NO. 13:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 14:**

All documents and things which refer to any source of sponsorship, funding, or other financial support for the creation, distribution, manufacturing, marketing, promotion, and/or sale of Petitioner's NAUGLES Products.

**RESPONSE TO DOCUMENT REQUEST NO.14:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 15:**

All documents and things which refer to Petitioner's present and/or planned marketing plans for Petitioner's NAUGLES Products including, but not limited to specimens of all advertising and promotional materials which relate to or refer to Petitioner's NAUGLES Products.

**RESPONSE TO DOCUMENT REQUEST NO. 15:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is

vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 16:**

All documents and things from any promotional outlet, including but not limited to, magazines, blogs, newspapers, social media sites, television, radio, catalogues, circulars, leaflets, sales or promotional literature, brochures, bulletins, fliers, signs, sales displays, posters, and/or other materials in which Petitioner's NAUGLES Products have been promoted and/or may be promoted in the future.

**RESPONSE TO DOCUMENT REQUEST NO.16:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or



intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 17:**

All documents and things which refer to Petitioner's present and/or planned manufacturing processes and supply chains for Petitioner's NAUGLES Products.

**RESPONSE TO DOCUMENT REQUEST NO.17:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v.*

*Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 18:**

All documents and things which refer to Petitioner's current shipping processes and or planned shipping processes for Petitioner's NAUGLES Products.

**RESPONSE TO DOCUMENT REQUEST NO.18:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 19:**

All documents and things which refer to Petitioner's monthly expenditures to date and planned future expenditures with respect to Petitioner's NAUGLES Products.

**RESPONSE TO DOCUMENT REQUEST NO. 19:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 20:**

All documents and things which refer to any consumer or market testing Petitioner has received or conducted relating to Petitioner's NAUGLES Products.

**RESPONSE TO DOCUMENT REQUEST NO.20:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the

discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 21:**

All documents and things which refer to any consumer or market testing Petitioner has received or conducted relating to Petitioner's NAUGLES Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 21:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing

expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 22:**

All documents and things, including but not limited to, communications with third parties, social media pages, and blogs which refer to Del Taco, Del Taco's marks, or Del Taco's goods or services.

**RESPONSE TO DOCUMENT REQUEST NO. 22:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this request on the grounds that it is vague, ambiguous, unduly burdensome, overly broad and seeks documents and things that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, specifically but not limited to, Respondent has not defined the phrases "Del Taco's marks" or "Del Taco's goods or services," not limited the requested communications to those involving Petitioner, and Respondent can obtain for itself public information regarding third party online discussions.

**DOCUMENT REQUEST NO. 23:**

All documents and things, including but not limited to, communications with third parties, social media pages, and blogs which refer to Petitioner's NAUGLES Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 23:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests

information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 24:**

All documents and things, including but not limited to, communications with third parties, social media pages, and blogs which refer to Petitioner's NAUGLES Products.

**RESPONSE TO DOCUMENT REQUEST NO.24:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a

cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark).

**DOCUMENT REQUEST NO. 25:**

All documents and things, including but not limited to, plans, specifications, proposals, correspondence and memoranda, and samples that refer to the design, specifications, packaging, locations, recipes, format, and ingredients for Petitioner's NAUGLES Products.

**RESPONSE TO DOCUMENT REQUEST NO.25:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat

broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark).

**DOCUMENT REQUEST NO. 26:**

All documents which refer to each and every discussion, correspondence, dispute, controversy, or proceeding of any kind or nature between Petitioner and any third party which involved Petitioner’s NAUGLES Mark as applied for or any common law variation thereof.

**RESPONSE TO DOCUMENT REQUEST NO. 26:**

Petitioner incorporates by this reference its General Objections to Respondent’s Requests as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark).



**DOCUMENT REQUEST NO. 27:**

All documents and things on which Petitioner relied in making its allegations contained in Petitioner's PETITION FOR CANCELLATION.

**RESPONSE TO DOCUMENT REQUEST NO. 27:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects to this Request to the extent that it seeks production of documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege.

Subject to and without waiving these objections, Petitioner will produce responsive, non-privileged documents to the extent that any exist and are within Petitioner's possession, custody or control.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: July 11, 2011

By: 

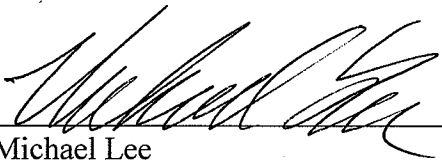
Susan M. Natland  
Gregory B. Phillips  
2040 Main Street, Fourteenth Floor  
Irvine, CA 92614  
(949) 760-0404

Attorneys for Christian M. Ziebarth, Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **PETITIONER'S RESPONSE TO RESPONDENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS** upon Respondent's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on July 11, 2011, addressed as follows:

April L. Besl, Esq.  
DINSMORE & SHOHL LLP  
255 East Fifth Street  
Cincinnati, OH 45202

  
Michael Lee

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Christian M. Ziebarth,  
Petitioner,  
  
v.  
  
Del Taco, LLC,  
Respondent.

Cancellation No.  
92053501

**PETITIONER'S RESPONSE TO RESPONDENT'S FIRST SET OF REQUESTS FOR  
ADMISSIONS**

The following General Objections are incorporated by reference into each response set forth below and are not waived with respect to any response.

1. Petitioner generally objects to Respondent's Admission Requests to the extent they seek disclosure of any information, document, or thing protected, privileged or immune, or otherwise exempt from discovery pursuant to applicable state and federal statutes, the FRCP, case law, regulations, administrative orders, or any other applicable rules, decisions, or laws including, but not limited to, information protected by the attorney-client privilege, the work-product doctrine or other applicable privilege.

2. Petitioner generally objects to Respondent's Admission Requests to the extent they purport to impose upon Petitioner obligations greater than those imposed by the applicable FRCP, 37 CFR § 2.120(d), or other applicable rules or law.

3. Petitioner generally objects to Respondent's Admission Requests to the extent that they seek information that is irrelevant and not calculated to lead to the discovery of

admissible evidence or to the extent that Respondent's Admission Requests seek the disclosure of information, documents or things beyond the scope of discovery as provided by the applicable FRCP, 37 CFR § 2.120(d), or other applicable rules or law.

4. Petitioner objects to Respondent's Admission Requests to the extent that they request confidential or proprietary information. Petitioner may provide such information, if relevant, not obtainable by less intrusive means, and not privileged, subject to the Trademark Trial and Appeal Board Protective Order in place between the parties.

5. Petitioner reserves the right to object to further inquiry with respect to the subject matter of Respondent's Admission Requests and responses provided thereto.

6. Petitioner objects to each of Respondent's Admission Requests to the extent that they seek information that is a matter of public record or otherwise available to Respondent without imposing undue burden on Respondent.

7. Petitioner objects to Respondent's Admission Requests on the grounds that they are premature in that Petitioner has not yet completed its own discovery and preparation for the testimony or trial periods. Petitioner reserves the right to provide any subsequently discovered information, and to supplement or change its responses based on such information.

8. As to all matters referred to in these responses to Respondent's Admission Requests, investigation and discovery continues. Accordingly, Petitioner reserves its right to modify, amend or change these responses, to present, use or rely on in any proceedings and at trial any supplemental, amended, changed or modified responses and/or further information and documents obtained during discovery and preparation for trial. Further discovery, independent investigation, and legal research and analysis may supply additional facts and documents adding meaning to known facts and documents, as well as establish entirely new factual conclusions or

legal conclusions, all of which may lead to substantial additions to, changes in, and variations from the responses set forth herein. Petitioner reserves the right to produce any subsequently discovered evidence, facts, and/or documents, and to supplement, amend, or change its responses based on such information. The responses given herein are done so in a good faith effort to supply as much information as is presently known, which should in no way lead to the prejudice of Petitioner in connection with further discovery, research or analysis. However, Petitioner reserves the right to supplement, change or amend its responses due to information inadvertently omitted from these responses. No incidental or implied admissions of any kind are intended by the responses herein.

9. Petitioner preserves all objections as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose in any proceeding in this or any other action.

10. Petitioner preserves the right to object to the use of any response or document in any proceeding in this or any other action.

11. Petitioner preserves the right to object on any grounds, at any time, to a demand for further response to these or any other Admission Requests.

#### **RESPONSE TO PETITIONER'S FIRST REQUESTS FOR ADMISSIONS**

##### **REQUEST FOR ADMISSION NO. 1:**

Petitioner is not currently offering any products under Petitioner's NAUGLES Mark.

##### **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also

objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 2:**

Petitioner has not previously offered any products under Petitioner's NAUGLES Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation

action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 3:**

Petitioner is not currently offering any services under Petitioner's NAUGLES Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party")

(emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 4:**

Petitioner has not previously offered any services under Petitioner’s NAUGLES Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4



(T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 5:**

Petitioner was not offering cafeteria and restaurant services under Petitioner's NAUGLES Mark as of May 17, 2010.

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's

mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 6:**

Petitioner is not currently offering cafeteria and restaurant services under Petitioner's NAUGLES Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of

discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 7:**

Petitioner has not entered into any licensing agreements with third parties in connection with Petitioner's NAUGLES Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 8:**

Petitioner has not obtained any loans necessary to finance the manufacturing, sale and distribution of Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 9:**

Petitioner has not entered into a partnership to finance the manufacturing, sale and distribution of Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 10:**

Petitioner has not raised any funds to finance the manufacturing, sale and distribution of Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 11:**

Petitioner has not created any marketing plans for Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 12:**

Petitioner has not made any monthly expenditures to date for the purpose of manufacturing or preparing to manufacture Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 13:**

Petitioner has not conducted any consumer testing with respect to Petitioner's NAUGLES Products.



**RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 14:**

Petitioner has not conducted any market testing with respect to Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials

regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 15:**

Petitioner has not conducted any consumer testing with respect to Petitioner's NAUGLES Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing

discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 16:**

Petitioner has not conducted any market testing with respect to Petitioner’s NAUGLES Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 17:**

Petitioner has not entered into any contracts with third parties for manufacturing of Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 18:**

Petitioner has not entered into any contracts with third parties for ingredients to be used in Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the

grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 19:**

Petitioner has not entered into any contracts with third parties for shipping of Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery

regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 20:**

Petitioner has not entered into any contracts with third parties for the sale of Petitioner’s NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s

mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 21:**

Petitioner has not entered into any contracts with third parties to operate cafeterias offering Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 22:**

Petitioner has not entered into any contracts with third parties to operate restaurants offering Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 23:**

Petitioner has not entered into any contracts with third parties for locations where Petitioner's NAUGLES Products will be offered.

**RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably



calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 24:**

Petitioner has not entered into any contracts with third parties for marketing of Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat

broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request..

**REQUEST FOR ADMISSION NO. 25:**

Petitioner has not entered into any negotiations with third parties for manufacturing of Petitioner’s NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of

discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 26:**

Petitioner has not entered into any negotiations with third parties for ingredients to be used in Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 27:**

Petitioner has not entered into any negotiations with third parties for shipping of Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 28:**

Petitioner has not entered into any negotiations with third parties for the sale of Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials

regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 29:**

Petitioner has not entered into any negotiations with third parties to operate cafeterias offering Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing

discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 30:**

Petitioner has not entered into any negotiations with third parties to operate restaurants offering Petitioner’s NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 30:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 31:**

Petitioner has not entered into any negotiations with third parties for locations where Petitioner's NAUGLES Products will be offered.

**RESPONSE TO REQUEST FOR ADMISSION NO. 31:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 32:**

Petitioner has not entered into any negotiations with third parties for marketing of Petitioner's NAUGLES Products.

**RESPONSE TO REQUEST FOR ADMISSION NO. 32:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the

grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 33:**

The website located at the domain name <http://www.mexfoodla.com/> is owned by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 33:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery



regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 34:**

The website located at the domain name <http://www.mexfoodla.com/> is operated by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 34:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s

mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 35:**

All posts by “ChristianZ” at the domain name <http://WWW.mexfoodla.com/> are by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 35:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 36:**

Petitioner has not discussed Petitioner’s NAUGLES Products on <http://www.mexfoodla.com/>.

**RESPONSE TO REQUEST FOR ADMISSION NO. 36:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 37:**

Petitioner has not discussed Petitioner's NAUGLES Mark on <http://www.mexfoodla.com/>.

**RESPONSE TO REQUEST FOR ADMISSION NO. 37:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials

regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 38:**

The website located at the domain name <http://ocfoodblogs.blogspot.com/> is owned by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 38:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing

discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 39:**

The website located at the domain name <http://ocfoodblogs.blogspot.com/> is operated by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 39:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 40:**

All posts by “ChristianZ” at the domain name <http://ocfoodblogs.blogspot.com> are by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 40:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 41:**

Petitioner has not discussed Petitioner’s NAUGLES Products on <http://ocfoodblogs.blogspot.com>.

**RESPONSE TO REQUEST FOR ADMISSION NO. 41:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the

grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 42:**

Petitioner has not discussed Petitioner's NAUGLES Mark on <http://ocfoodblogs.blogspot.com>.

**RESPONSE TO REQUEST FOR ADMISSION NO. 42:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery

regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 43:**

The website located at the domain <http://warmth-of-the-sun.blogspot.com/> is owned by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 43:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s



mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 44:**

The website located at the domain <http://warmth-of-the-sun.blogspot.com/> is operated by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 44:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 45:**

All posts by "ChristianZ" at the domain name <http://warmth-of-the-sun.blogspot.com/> are by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 45:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 46:**

Petitioner has not discussed Petitioner's NAUGLES Products on <http://warmth-of-the-sun.blogspot.com/>.

**RESPONSE TO REQUEST FOR ADMISSION NO. 46:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials

regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 47:**

Petitioner has not discussed Petitioner's NAUGLES Mark on <http://warmth-of-the-sun.blogspot.com/>.

**RESPONSE TO REQUEST FOR ADMISSION NO. 47:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing

discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 48:**

The Website located at the domain <http://ocmexfood.blogspot.com/> is owned by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 48:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 49:**

The website located at the domain <http://ocmexfood.blogspot.com/> is operated by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 49:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 50:**

All posts by "ChristianZ" at the domain name <http://ocmexfood.blogspot.com/> are by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 50:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the

grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 51:**

Petitioner has not discussed Petitioner's NAUGLES Products on <http://ocmexfood.blogspot.com/>.

**RESPONSE TO REQUEST FOR ADMISSION NO. 51:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery

regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 52:**

Petitioner has not discussed Petitioner’s NAUGLES Mark on <http://ocmexfood.blogspot.com/>.

**RESPONSE TO REQUEST FOR ADMISSION NO. 52:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s

mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 53:**

The website located at the domain <http://www.christianziebarth.com/> is owned by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 53:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 54:**

The website located at the domain <http://www.christianziebarth.com/> is operated by Petitioner.



**RESPONSE TO REQUEST FOR ADMISSION NO. 54:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 55:**

All information posted at the domain <http://www.christianziebarth.com/> is posted by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 55:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably

calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 56:**

Petitioner has not discussed Petitioner's NAUGLES Products on <http://www.christianziebarth.com/>.

**RESPONSE TO REQUEST FOR ADMISSION NO. 56:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat

broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 57:**

Petitioner has not discussed Petitioner’s NAUGLES Mark on <http://www.christianziebarth.com/>.

**RESPONSE TO REQUEST FOR ADMISSION NO. 57:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of

discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 58:**

The Facebook page located at <http://www.facebook.com/ocmexfood?v=wall> is owned by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 58:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 59:**

The Facebook page located at <http://www.facebook.com/ocmexfood?v=wall> is operated by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 59:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 60:**

All posts under the name "OC Mex Food" on the Facebook page located at <http://www.facebook.com/ocmexfood?v=wall> are by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 60:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials

regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 61:**

Petitioner has not discussed Petitioner's NAUGLES Products on <http://www.facebook.com/ocmexfood?v=wall>.

**RESPONSE TO REQUEST FOR ADMISSION NO. 61:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing

discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 62:**

Petitioner has not discussed Petitioner’s NAUGLES Mark on <http://www.facebook.com/ocmexfood?v=wall>.

**RESPONSE TO REQUEST FOR ADMISSION NO. 62:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 63:**

The Twitter page located at <http://twitter.com/#!/cmziebarth> is owned by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 63:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 64:**

The Twitter page located at <http://twitter.com/#!/cmziebarth> is operated by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 64:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably



calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 65:**

All posts under the name "cmziebarth" on <http://twitter.com/#!/cmziebarth> are by Petitioner.

**RESPONSE TO REQUEST FOR ADMISSION NO. 65:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat

broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 66:**

Petitioner has not discussed Petitioner’s NAUGLES Products on <http://twitter.com/#!/cmziebarth>.

**RESPONSE TO REQUEST FOR ADMISSION NO. 66:**

Petitioner incorporates by this reference its General Objections to Respondent’s Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner’s use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent’s abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party”) (emphasis added); T.B.M.P. § 402.01 (“While the scope of discovery is therefore somewhat broad, parties may not engage in ‘fishing expeditions’ and must act reasonably in framing discovery requests.”); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner’s use of its mark is irrelevant in connection with petitioner’s claim of abandonment of respondent’s mark). As set forth in these objections, this Admission Request is outside the allowable scope of

discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 67:**

Petitioner has not discussed Petitioner's NAUGLES Mark on <http://twitter.com/#!/cmziebarth>.

**RESPONSE TO REQUEST FOR ADMISSION NO. 67:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 68:**

Apart from its current NAUGLES application, Petitioner has not applied to register the NAUGLES mark with any governmental entity.

**RESPONSE TO REQUEST FOR ADMISSION NO. 68:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 69:**

Petitioner took the idea for Petitioner's NAUGLES Products from Registrant.

**RESPONSE TO REQUEST FOR ADMISSION NO. 69:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation

action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 70:**

Petitioner was aware of Registrant's use of the NAUGLES mark prior to filing Petitioner's NAUGLES Mark with the United States Patent and Trademark Office.

**RESPONSE TO REQUEST FOR ADMISSION NO. 70:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4

(T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 71:**

Petitioner was aware of Registrant's registration of the NAUGLES mark prior to filing Petitioner's NAUGLES Mark with the United States Patent and Trademark Office.

**RESPONSE TO REQUEST FOR ADMISSION NO. 71:**

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

**REQUEST FOR ADMISSION NO. 72:**

Petitioner selected Petitioner's NAUGLES Mark for Petitioner's NAUGLES Products with full knowledge of Registrant's ownership and use of NAUGLES.

**RESPONSE TO REQUEST FOR ADMISSION NO. 72:**

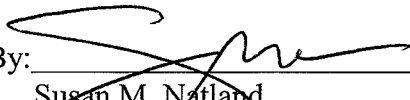
Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the *claim or defense* of any party") (emphasis added); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, this Admission Request is outside the allowable scope of

discovery in this proceeding. Accordingly, Petitioner is not required to admit or deny this Admission Request, and does not admit this Admission Request.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: July 11, 2011

By:   
Susan M. Natland  
Gregory B. Phillips  
2040 Main Street  
Fourteenth Floor  
Irvine, CA 92614  
(949) 760-0404  
Attorneys for Christian M. Ziebarth, Petitioner

11519224



CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **PETITIONER'S RESPONSE TO RESPONDENT'S FIRST SET OF REQUESTS FOR ADMISSIONS** upon Respondent's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on July 11, 2011, addressed as follows:

April L. Besl, Esq.  
DINSMORE & SHOHL LLP  
255 East Fifth Street  
Cincinnati, OH 45202

  
Michael Lee

**Dinsmore & Shohl** LLP  
ATTORNEYS

April L. Besl  
(513) 977-8527  
april.besl@dinslaw.com

August 11, 2011

**VIA ELECTRONIC MAIL**

Gregory B. Phillips  
Knobbe Martens Olson & Bear LLP  
2040 Main Street, 14th Floor  
Irvine, CA 92614

RE: Trademark Cancellation Action No. 92053501  
*Ziebarth v. Del Taco LLC*  
Our Ref: 63804-2

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Dear Gregory:

We have reviewed Mr. Ziebarth's responses to Respondent's First Set of Interrogatories and Requests for Production of Documents and Respondent's First Set of Requests for Admissions. After having requested two extensions of time to respond to these requests, totaling almost two months of additional time, we were surprised to discover that Mr. Ziebarth's responses consisted solely of numerous objections and refusals to respond.

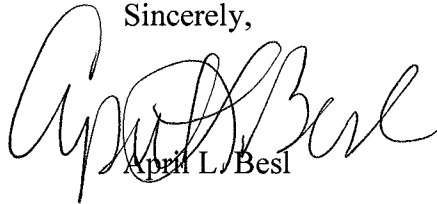
We disagree that the documents and responses requested in Interrogatories 1-15, Document Requests 1-26, and Requests for Admission 1-72 relating to Mr. Ziebarth's pending application with the US Trademark Office for NAUGLES (Serial No. 85/040746) and intent to use the NAUGLES mark are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence and ask your client to reconsider these objections. As you are well aware, standing is a threshold issue that must be established by a plaintiff in every *inter partes* case. See *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982). Mr. Ziebarth has based his standing on his claim of ownership of an Intent-to-Use trademark application. Interrogatories 1-15, Document Requests 1-26, and Requests for Admission 1-72 are clearly relevant as they directly relate to Mr. Ziebarth's standing and seek evidence of his *bona fide* intent to use the mark. An absence of documentation is clear evidence that a Petitioner does not have the requisite *bona fide* intent when he filed the application. See *Commodore Electronics Ltd. V. CBM Kabushiki Kaisha*, 26 USPQ2d 1503 (TTAB 1993). If Mr. Ziebarth did not have a *bona fide* intent, then his application is void *ab initio* and he has no standing to bring this cancellation proceeding. Thus, the requests at issue were clearly directed to relevant subject matter and therefore we request that Mr. Ziebarth reconsider his objections.

255 East Fifth Street, Suite 1900 Cincinnati, OH 45202  
513.977.8200 513.977.8141 fax www.dinslaw.com

Gregory B. Phillips  
August 11, 2011  
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Please consider this letter as the requisite attempt under the Trademark Trial and Appeal Board Manual of Procedure to resolve the above-described discovery issues prior to the filing of a motion to compel. If we do not receive the requested documents and responses within ten (10) days of this letter, we will be forced to file a motion to compel with the Board.

Sincerely,



April L. Besl

ALB:kh

cc: Joshua A. Lorentz, Esq.  
B. Joseph Schaeff, Esq.

August 21, 2011

**VIA EMAIL**

April L. Besl, Esq.  
DINSMORE & SHOHL LLP  
255 East Fifth Street  
Cincinnati, OH 45202  
April.Besl@DINSLAW.com

Re: Trademark Cancellation Action No. 92053501  
*Ziebarth v. Del Taco LLC*  
Our Ref. CZIEB.001CN

Dear April:

We are responding to your letter of August 11, 2011.

**Petitioner Has Standing and Maintains Objections to Respondent's Discovery Requests**

We again assert our objections that Respondent's Interrogatories 1-15, Document Requests 1-26 and Requests for Admissions 1-72 are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. As stated in Petitioner's responses, Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on Respondent's abandonment of the NAUGLES mark. *See* Fed. R. Civ. P. 26(b)(1); TBMP § 402.01; *Nirvana, Inc. v. Nirvana for Health Inc.*, 2010 WL 5099662, f.4 (TTAB, Dec. 1, 2010). Respondent's discovery and admissions requests appear to be an attempt by Respondent to harass Petitioner, rather than reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, Petitioner has standing to petition for cancellation based on his federal application for the mark NAUGLES (U.S. Serial No. 85/040746) that was refused registration in light of Respondent's registration for the mark NAUGLES (U.S. Reg. No. 1043729). *See* Petition for Cancellation, ¶¶ 1-2. The Board in *Anosh Toufigh v. Persona Parfume, Inc.*, 95 USPQ2d 1872, 1874 (TTAB 2010), ruled that petitioner had standing to file a cancellation action against a third party registration based on abandonment and fraud. The Board opined that refusal of the petitioner's application based on a likelihood of confusion with the respondent's registration provides a basis for petitioner's standing in the cancellation action. *Id.* Furthermore, citing *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982), which you reference in your letter, the Board in *Anosh Toufigh* stated that the petitioner's

April L. Besl, Esq.

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refused application shows the petitioner's real interest in the proceeding and that the petitioner is not an "intermeddler." *Id.* The application in *Anosh Toufigh*, U.S. Serial No. 77/220963, was based on the applicant's intent-to-use the mark. Here, Petitioner has already produced to you copies of the file history for U.S. Serial No. 85/040746, CZIEB0000057-CZIEB0000105.

The other case you cite in your letter, *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503 (TTAB 1993), is not pertinent. The mark at issue in *Commodore* was opposed based on fraud due to the applicant's lack of a *bona fide* intent to use the mark at the time of filing. Therefore, the applicant's intent-to-use the mark at the time the application was filed was relevant to the basis of the opposition. That is clearly not the facts of the instant matter.

Even if we were to assume that Petitioner needs to evidence his intent-to-use the NAUGLES mark at the time of filing his application to establish standing in the cancellation action (which is not the case), Respondent's discovery and admission requests far exceed requesting documents and information relevant to Petitioner's intent-to-use the NAUGLES mark. As noted above, Respondent's requests appear to be an attempt by Respondent to unfairly use legal maneuvering to harass Petitioner. Overall, information regarding Petitioner's intent-to-use the NAUGLES mark is irrelevant to this cancellation proceeding, and Petitioner need only show his refused registration for NAUGLES to establish standing and damage.

In the light of the above and the cited precedential Board decision in *Anosh Toufigh*, we urge you to reconsider your threatened Motion to Compel, which is clearly not warranted.

**Documents Produced by Respondent**

In our conversation on July 7, 2011, you confirmed that you would bates number the individual documents produced by Respondent in response to Petitioner's first set of discovery requests. As we discussed, numbering each document will assist the parties and the Board in identifying who produced the documents and when, as well as identifying the documents during testimony and final briefing. We have not received the bates numbered documents. Please provide the bates numbered documents.

**Further Discovery Requests from Petitioner**

Enclosed are courtesy copies of Petitioner's First Set of Interrogatories, Second Set of Requests for Documents and Things, and First Set of Requests for Admissions. Please bates number each individual document that is produced in response to these discovery requests.

April L. Besl, Esq.

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If you have any questions or want to discuss further, please let us know.

Regards,

A handwritten signature in black ink, appearing to read 'G. Phillips', with a stylized flourish at the end.

Gregory B. Phillips

Enclosures

cc: Susan M. Natland, Esq.

11773371